IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

WP(C).No. 17094 of 2005(I)

PETITIONER:

N.SUBRAMANIA PILLAI,
JANATHA MANDIRAM, PARUTHICHAKONAM,
BALARAMAPURAM, THIRUVANANTHAPURAM.

BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE DISTRICT COLLECTOR, THIRUVANANTHAPURAM.**

3. **THE PRINCIPAL SECRETARY TO GOVERNMENT, GENERAL ADMINISTRATION (FFP-B) DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SRI.V.T.K.MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.17094/2005

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE KERALA FREEDOM FIGHTER'S PENSION RULES.

EXT.P2:- COPY OF THE CO- PRISONER CERTIFICATE ISSUED BY SRI.K.KUNHUKRISHNAN, A RECIPIENT OF CENTRAL FREEDOM FIGHTER PENSION.

EXT.P3:- COPY OF THE CO- PRISONER CERTIFICATE ISSUED BY SRI.K.V.PARAMESWARAN NAIR, A RECIPIENT OF CENTRAL FREEDOM FIGHTER PENSION AN ALSO STATE PENSION FROM TAMIL NADU GOVT.

EXT.P4:- COPY OF THE CO- PRISONER CERTIFICATE ISSUED BY SRI.M.ALIKUNJU SASTRI, EX-MLA. ULLOOR CONSTITUENCY.

EXT.P5:- COPY OF THE CO- PRISONER CERTIFICATE ISSUED BY SRI.P.FAKKIRKHAN, A RECIPIENT OF THAMARAPATHRA BY THE CENTRAL GOVERNMENT.

EXT.P6:- COPY OF THE CO- PRISONER CERTIFICATE ISSUED BY SRI.A.JAMA LABBA, RECIPIENT OF CENTRAL FREEDOM FIGHTER PENSION.

EXT.P7:- COPY OF THE ORDER NO.D.DIS. 63416/83/(G2) DT. 6.8.86 OF THE 2ND RESPONDENT.

EXT.P8:- COPY OF THE ORDER NO.G2-101449/86/K.DIS. DT. 6.10.87 OF THE 2ND RESPONDENT.

EXT.P9:- COPY OF THE LETTER NO.71251/FFP-B 1/99/PAD DT. 17.8.99 OF THE 3RD RESPONDENT.

EXT.P.10:- COPY OF THE PETITION DT. 7.5.2000 FILED BY THE PETITIONER BEFORE THE HONOURABLE CHIEF MINISTER OF KERALA.

EXT.P11:- COPY OF THE LETTER NO.48629/FFP.B 1/2000/PAD DT. 12.9.01 OF THE 1ST RESPONDENT.

EXT.P12:- COPY OF THE PETITION DT. 21.10.01 FILED BY THE PETITIONER BEFORE THE HONOURABLE CHIEF MINISTER OF KERALA.

EXT.P13:- COPY OF THE LETTER NO .94921/FFP.B1/01/GAD DT. 28.8.02 OF THE 3RD RESPONDENT.

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EXT.P14:- COPY OF THE PETITION DT. 26.4.200 SUBMITTED BY THE PETITIONER BEFORE THE CHIEF JUDICIAL MAGISTRATES COURT, TVPM.

EXT.P15:- COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN OP.29356/02.

EXT.P16:- COPY OF THE STATEMENT FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P17:- COPY OF THE LETTER NO.4390/FFP. B1/05/GAD DT. 10.5.05 OF THE 1ST RESPONDENT.

EXT.P18:- COPY OF THE CONVICT REGISTER OF CENTRAL PRISON, THIRUVANANTHAPURAM RELATING TO SRI.A.JAMAL LABBA.

EXT.P19:- COPY OF THE PAPER REPORT APPEARED IN MATHRUBHOOMI DAILY DT. 11.2.05 IN THIRUVANANTHAPURAM EDITION .

EXT.19(a):- COPY OF THE PAPER REPORT APPEARD IN MATHRUBHOOMI DAILY DT. 12.2.05 IN THIRUVANANTHAPURAM EDITION.

/TRUE COPY/

P.A. TO JUDGE

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T.R.RAMACHANDRAN NAIR, J.

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WP(C).No.17094 of 2005-I.

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Dated this the 31st day of July, 2007.

J U D G M E N T

The petitioner is challenging Ext.P17 order passed by the Government rejecting the claim for grant of pension under the Kerala Freedom Fighters' Pension Scheme. The petitioner herein had approached this Court earlier by filing OP.No.29356/2002 which was disposed of by Ext.P15 judgment.

2. The short facts are; the petitioner had actively participated in the freedom struggle and he was arrested and imprisoned in the Kuzhithurai lock up from 15.8.1942 to 30.1.1943. Thereafter he had to remain underground from 1.2.1943 to 6.9.1944 pursuant to an arrest warrant issued against him. Ext.P1 is the Kerala Freedom Fighters' Pension Rules which governs the field. The case of the petitioner is that the first application filed by him is dated 24.9.1982 which was supported by co-prisoner certificates issued by leading freedom fighters who have been granted Central Freedom Fighter's pension. He had produced the certificates from Shri.K.Kunhukrishnan, a recipient of Central Freedom Fighter pension, Shri.K.V.Parameswaran Nair, recipient of Central Freedom Fighter pension

and State pension from Tamil Nadu Government, Shri.M.Alikunju Sastri, Ex-M.L.A., Shri.P.Fakkirkhan, recipient of Thamrapathra issued by the Central Government and Shri.A.Jama Labba, recipient of Central Freedom Fighters' pension. These certificates are evidenced by Exts.P2 to P6 in this writ petition.

3. Earlier his application for pension was rejected by Ext.P7 by the District Collector. The application was rejected only on the ground that the documents produced by him are insufficient. The petitioner filed an appeal dated 22.12.1986 which was rejected by Ext.P8 stating that no additional co-prisoner's certificate or acceptable records have been produced by him. He filed a representation before the Hon'ble Chief Minister which was rejected as per Ext.P9. In Ext.P9 the reasons stated are that along with the co-prisoner's certificates, records from jail of the certifiers have not been produced, certificates to prove sufferings have not been produced and also that the District Collector has not recommended his application. It resulted in filing a fresh representation dated 7.5.2000 before the Government and that was rejected by Ext.P11 stating that the certificates are not in prescribed form and that the petitioner has not produced the jail records of the co-prisoner's and those in respect of him. Then the petitioner approached the Government again by filing Ext.P12 representation reiterating his case which was again rejected by Ext.P13 communication. Ext.P13 was under challenge

in the writ petition OP.No.29356/2002 along with other orders. Ext.P14 is the document showing that the records relating to the year 1942 are not available in the Chief Judicial Magistrate's Court, Thiruvananthapuram. Therefore, the same is an unavailable record. All these documents were produced in OP.No.29356/2002. After hearing the parties elaborately, a learned single Judge of this Court was pleased to dispose of the above writ petition as per Ext.P15 judgment. The relevant paragraph of the judgment containing the findings and the directions is para.7, which is reproduced herein below:

> **"7. I have considered the rival submissions made at the Bar carefully and anxiously. I have no difficulty to agree with the learned Senior Government Pleader who submits that the petitioner is not entitled to reliefs which are asked for as reliefs Nos.2 and 3 in the O.P. However, having considered the rival submissions and the facts as disclosed through the various affidavits filed in this case, I am of the view that the petitioner's application for State Freedom Fighters' pension requires to be considered once again by the authorities concerned. As rightly submitted by the learned counsel for the petitioner, Ext.P14 does not prescribe any particular form in which co-prisoners' certificates and abscondence certificates are to be submitted. Insistence on certificates in prescribed forms and production of documentary evidence from official records such as warrant of arrest, court records and jail records are made by the authorities on the basis of Government Circular dated 31.12.1993. The said circular pertains to applications which are received after 15.8.1985. In the instant case, Ext.P4 will show that the petitioner had applied for State pension prior to that date. His application is therefore entitled to be considered as having been submitted prior to the promulgation of the Government Circular. It is specifically contended by the petitioner in the OP and reiterated through the reply affidavit that State pension is being granted to several others on the basis of co-prisoners' certificates issued by the very same certifiers who had issued such certificates in favour of the petitioner.**

Those certificates which were relied on by the authorities for granting pension to those applicants, it is asserted, were exactly in the same form as the one issued in favour of the petitioner. This aspect of the matter is not specifically controverted in the counter-affidavit. If the above assertion of the petitioner is correct and if the only reason for insisting on certificates in a different format in the case of the petitioner is the circular relied on in the counter-affidavit, then the said reasoning will not be correct. The learned Government Pleader was not able to appraise me about the factual correctness of the above assertion of the petitioner. It is indicated through the counter affidavit that the report of the Tahsildar who was directed by the District Collector to enquire into the genuineness of the petitioner's claim was not favourable to the petitioner. The petitioner has asserted through the affidavits filed in this case that the District Advisory Committee which met on 5.12.2000 had recommended the petitioner's claim and that the report of the Tahsildar in that regard was favourable to the petitioner. In fact, Ext.P10 representation submitted by the petitioner contains a claim that the District Collector has recommended the petitioner's case and in Ext.P11 rejection order the reasons for rejection mentioned are only that the certificates are not in proper form, that they do not contain all the details and that they are not accompanied by documentary evidence regarding the jail records or records taken from official records. The reason assigned by the Government for rejecting the non-availability of records certificate produced by the petitioner is that the court does not mention clearly that there was a case as Crime No.66/1942 relating to freedom movement or that he was an accused in it. This reasoning cannot be good in the light of the observations of the Supreme Court in R.Narayanan (supra) which I quote as follows:-

> **"There is neither justice nor grace in the respondent's putting forth such objections. No one can really expect official records to have been preserved for a period of 40 years to prove the treatment given to the petitioner for the injuries sustained by him during the freedom struggle."**

Here also, inability has been expressed by the court to issue the certificate sought for, for want of documents. To insist that the

certificates should contain details such as Crime Number and identity of the accused will not be proper."

Therefore, going by the directions in the above judgment the following facts emerge:

That Circular No.57183/FFP-B1/93/GAD dated 31.12.1993 cannot apply to the facts of this case, as the petitioner's application has to be considered, as having been submitted prior to the promulgation of the Government Circular; As regards the certificates submitted by co-prisoners, this Court was pleased to hold that insistence of any different formalities in the case of the petitioner as regards the co-prisoners certificate is not justified. No particular form is prescribed for co-prisoner's certificate and abscondence certificates; that the reason for rejection of non-availability of records certificate for want of crime number and identity of accused will not be proper, and the certificate issued by Chief Judicial Magistrate, Thiruvananthapuram should be accepted as sufficient. Therefore, these are the final and binding directions which the Government was bound to follow while disposing of the application for pension under the scheme ie., Ext.P1.

4. A reading of the scheme of Ext.P1 shows that the freedom fighter means, "any person who on account of participation in the National Movement,

a) had undergone imprisonment for not less than six months or

b) had been kept under detention (including detention as under trial

prisoner) for not less then six months or

c) had remained underground for more than six months consequent on warrant for arrest having been issued against him."

Rule 5 shows that National Movement means a movement against the British Government in India or any Government within the country supported by it. Under Rule 6, this definition will cover participants from the present State of Kerala in all Freedom Movements within the country till 15.8.1947 and also those who participated in the struggle for responsible Government in the former Travancore State till 24.3.1948. This definition will also include those who had participated in the Goa Liberation Movement and the Liberation of Mahe from French Rule. Therefore, as far as an applicant for the benefit of the scheme is concerned he need be a freedom fighter in the National Movement as also for responsible Government in the former Travancore State.

5. While considering his claim for pension it is pertinent to note that in Ext.P17 what is attempted by the Government is to rely upon the report submitted by the District Collector and to reject the claim mainly based on the conclusions arrived at by the District Collector. A reading of Ext.P17 shows that the binding directions of this Court, Ext.P16 have not been considered in their letter and spirit. The parameters were clearly set out in the judgment and the authorities were not correct in finding out new

reasons to reject it.

6. Now I shall deal with the claim raised by the petitioner with reference to the documents relied upon. Ext.P2 is the certificate from Shri.N.Kunjukrishnan who is a recipient of Central Freedom Fighter Pension as per order of the Ministry of Home Affairs No.19/1/General/72.FF.II dated 12.10.1972. The certificate Ext.P2 shows that he was under imprisonment for more than five years during the freedom struggle in the Central Jail in Thiruvananthapuram District from 20.3.1120 M.E. to 19.2.1124 M.E. It has been clearly stated in the certificate that the petitioner was arrested on many occasions before 15.8.1942 and was arrested and detained along with the certifier in the Neyyattinkara Kuzhithura Police lock up for more than three months for taking part in the Quit India agitation and that he remained underground for more than six months for the period from 1.2.1943 to 6.9.1944. In Ext.P3, Shri.K.V.Parameswaran Nair, who was a recipient of S.S.S. Pension from Central Government and State Pension from Tamil Nadu Government has certified that the petitioner was arrested and imprisoned on account of his participation in the banned Quit India Movement during the Freedom Struggle and was lodged in the same Kuzhithurai Police lock up along with the certifier during the period 15.8.1942 to 30.1.1943. Shri.M.Alikunju Sastry, Ex-M.L.A. in Ext.P4 has referred to the participation of the petitioner in the Sucheendram firing

movement. Shri.P.Fakkirkhan in Ext.P5 has referred to the participation of the petitioner in the Quit India movement and has arrested and detained in Neyyattinkara and Kuzhithura Police lock up. The crucial document is Ext.P6, where the co-prisoner is Shri.A.Jamal Labba who is a recipient of Central Freedom Fighters Pension under the Ministry of Home Affairs as per Order No.S2.19/710/74/FFVI dated 9.10.1976 and State Freedom Fighters Pension. He has certified that the petitioner had remained underground for more than six months for the period from 1.2.1943 to 6.9.1944 as detention orders were issued against him. It has been clearly stated that he has been participating in the State Congress Agitation Movement during the freedom struggle. The petitioner has produced Ext.P18 true extract of the convict register of Central Prison, Thiruvananthapuram relating to the co-prisoner Shri.Abbas Lebba Jamal. This was produced before the District Collector and also before the Government when Ext.P17 order was passed. Therefore, as regards proof of the conviction of certifier, the petitioner has produced the jail records.

7. The reasons stated by the Government in Ext.P17 to reject are the following:

(i) The certificate produced by the petitioner in respect of the co-prisoner Shri.Jamal Labba has been produced after his demise and therefore verification with the original is difficult. In the said certificate there is no

clear indication about the Agitation/Movement in which he had participated.

(ii) That the District Collector has not recommended his case for pension and there are no convincing grounds to explain satisfactorily the long delay in applying for Kerala Freedom Fighters' pension. Adequate and convincing evidence is not seen to support the claim of the petitioner's for participation in a freedom movement, especially his age as reflected by the date of birth.

8. A reference to the report of the District Collector is also worth mentioning here. Practically the same is referred to in various paragraphs of Ext.P17. In the report made by the District Collector it appears that the District Collector pointed out that the petitioner had applied for Kerala Freedom Fighters' Pension in the year 1999 but the true fact is that his first application is dated 24.9.1982 which is clear from Ext.P7 communication issued by the District Collector to the petitioner. Therefore, the said finding in the report of the District Collector is against the admitted facts and could not have been relied upon to the Government to show that the application filed by the petitioner is unduly delayed. There is a finding that in the certificate issued by Shri.Jamal Labba there is no indication about the movement for which the petitioner had participated. This reason is also fundamentally wrong and absurd. It is also clear from the certificate Ext.P6 that the petitioner had been participating in the State Congress Agitation Movement during the freedom struggle. It is well known that in the former

Princely States, freedom movement was being led by various regional units and in the former Travancore it was led by the State Congress and in Cochin by Praja Mandalam, etc. Going by Ext.P1 what was required by the scheme was to prove participation for responsible Government in the struggle. The District Collector was totally wrong in reporting that there is no clear indication in Ext.P6 about the agitation/movement in which the petitioner had participated. For that reason that the report is totally contradictory to the evidence produced by the petitioner. There is total no application of mind and there is apparent error which is evident from the records itself.

9. Apart from that there is a binding direction to examine the question as to the reliance placed by the District Collector and the Government in respect of other applicants who have been granted pension based on the certificates issued by the very same co-prisoners. The petitioner has given in para.12 of Ext.P16 details that three persons ie., Shri.Ramanathan Nair, Shri.N.Velayudhan and Shri.R.Janardhanan Thampi has been granted pension based on the certificates issued by the very same co-prisoners. As far as this aspect is concerned, there is no finding against the petitioner in Ext.P17. Therefore, it can be taken that there is no dispute regarding that aspect and the same should therefore had to be weighed in his favour. The other item that was relied upon by the Government in the report of the District Collector is that the certificate from Shri.Jamal Labba cannot

be accepted as valid because of the fact that he died before the production of the certificate by the petitioner. The said reason is one recorded totally without any application of mind. All the details of the certifier are available and nobody has doubted them also. Therefore, the reason stated is too technical for rejecting the claim of the petitioner. True extract of the Convict Register Ext.P18 ought to have been accepted. In Ext.P17 the Government also had found fault with the petitioner for not producing the jail records of Shri.Jamal Labba, along his first application which reason is totally wrong and unsustainable especially in the light of directions contained in Ext.P15 judgment. The last one is about the tender age of petitioner. The rules do not prescribe any minimum age. Further people of all walks of life irrespective of age, etc., were part of Freedom Movement, here, in this part of the country also. It is well known that it was an on going struggle which was part of the national movement and the students in schools and colleges were actively participating in the freedom movement. Therefore, while rejecting the application, according to me, the Government has wrongly considered a fact which was not relevant at all. Therefore the said reason is also one which is found out only to reject the application for technical reason alone. In the counter-affidavit the acceptability of Ext.P6 and P18 are not specifically disputed also.

10. The learned Government Pleader submitted that even if it is

found that the reasons stated by the Government in Ext.P17 are not correct, again the matter will have to be sent to the authority for reconsideration. In fact in the light of the clear findings and directions issued in Ext.P15, when the reasons stated in Ext.P17 are found wrong, the matter need not be sent back again, since only one conclusion can follow.

11. Their Lordship of the Supreme Court in *Mukundlal Bhandari v. Union of India and Ors.* (1993 SCW 2508) had held that the object of the Scheme was to honour and where it was necessary also to mitigate the sufferings of those who had given their all for the country in the honour of its need. The spirit of the scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. The scheme should retain its high objective with which it was motivated. In Gurdial Singh v. Union of India (AIR 2001 SC 3881), it was held that:

> **"It should not be forgotten that the persons intended to be covered by the scheme have suffered for the country about half a century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the scheme."**
>
> **"The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of parties. As the object of the scheme is to honour and to mitigate the sufferings of those who had given their all for the country a**

> **liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking protection under the scheme."**

The same principle was followed in *Bhaurao Dagdu Paralkar v. State of Maharashtra* (AIR 2005 SC 3330) , in which Their Lordships held that the genuine freedom fighters deserve to be treated with reverence, respect and honour.

12. The grounds for judicial review are well settled by various other decisions of the Apex Court also. Some of the recent decisions on the subject are: Cholan Roadways Ltd. v. G.Thirugnanasambandam (2005(3) SCC 241), S.N.Chandrashekar v. State of Kerala (2006(3) SCC 208) and Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai (2005(7) SCC 627). In 2006(3) SCC 208 it was held in para.33 on the following terms:

> **"It is now well known that the concept of error of law includes the giving of reasons that are bad in law or (where there is a duty to give reason) inconsistent, unintelligible or substantially inadequate."**

In 2005(3) SCC 241 it was held in para.35 that, "errors of fact can also be a subject matter of judicial review." Therefore, if the authorities have not applied their mind to the relevant documents and have arrived at a conclusion which are totally perverse and totally against the facts proved by the party concerned then this Court can interfere with those findings of facts. Ext.P17 order passed by the Government is totally perverse and without any

application of mind and without considering the relevant documents and the binding directions in Ext.P15 judgment. The reasons stated that the records of the co-prisoners cannot be accepted as he has passed away before its production; that the agitation/movement in which the petitioner had participated is not indicated; that the petitioner was of tender age are totally without any application of mind. The other ground stated is delay. It is evident from Ext.P7 that his application is dated 24.9.1982. Further that ground is not available also in the light of the fact that the same has not been stated at any time while passing Exts.P9, P11 or P13, and also in view of the clear directions in Ext.P15 judgment. No explanation as to delay was warranted in view of Ext.P15 judgment. These reasons have been found out only to reject the claim on irrelevant grounds. Minimum age for grant of benefit under the scheme is not prescribed in it. Further no particular age can be attributed also as required for part of freedom movement. As held by the Supreme Court, freedom fighters are entitled for respect and honour and in a too technical manner the claim cannot be rejected by the authorities concerned. When the details of a person as regards his detention, arrest warrant, etc., are not available then the certificate from co-prisoner are relevant. Therefore, again to insist on production of such documents is without any justification, especially since in Ext.P15 this Court directed that the non-availability of records, certificate issued by Chief Judicial Magistrate

should be accepted as sufficient. In Ext.P15 judgment this Court had categorically directed the authorities to consider various other aspects in the light of the fact that his case deserves sympathetic consideration. It was also directed by this Court that the Government should examine an important aspect relating to grant of pension in respect of other freedom fighters based on the certificates issued by the very same co-prisoners, as in the case of the petitioner.

13. Therefore, I quash Ext.P17 and it is declared that the petitioner is eligible for grant of pension under Ext.P1 scheme. There will be a direction to the respondents to pass an order sanctioning the same within a period of two months from the date of production of a copy of this judgment by the petitioner and disburse the amount accordingly.

The writ petition is disposed of as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-